

Railroad Retirement Board

§ 361.10

given full opportunity to present evidence, witnesses and argument.

§ 361.7 Written decision following a hearing.

Within thirty days after the hearing, the administrative law judge or hearing official shall issue a written decision stating the facts evidencing the nature and origin of the alleged debt; the amount and validity of the alleged debt; and the judge or hearing official's analysis, findings and conclusions with respect to the employee's position on liability for the debt and with respect to his or her eligibility for waiver. The decision of the administrative law judge or hearing official shall be the final agency decision.

§ 361.8 Limitations on notice and hearing requirements.

(a) The procedural requirements of this part are not applicable to collections which result from:

(1) An employee's election of coverage or of a change in coverage under a Federal benefits program which requires periodic deductions from pay and which cannot be placed into effect immediately because of normal processing delays; and

(2) Ministerial adjustments in pay rates or allowances which cannot be placed into effect immediately because of normal processing delays.

(b) *Limited procedures.* If the period of the normal processing delay for which the retroactive deduction must be recovered does not exceed four pay periods, the procedures provided in §§ 361.4 and 361.5 of this part shall not apply, but the Board shall in advance of the collection issue a general notice that:

(1) Because of the employee's election, future salary will be reduced to cover the period between the effective date of the election and the first regular withholding, and the employee may dispute the amount of the retroactive collection by notifying a specified office or official; or

(2) Due to a normal ministerial adjustment in pay or allowances which could not be placed into effect immediately, future salary will be reduced to cover any excess pay or allowances received by the employee, the employee may dispute the amount of the

retroactive collection by notifying a specified office or official.

(c) *Limitation on exceptions.* The exceptions described in paragraphs (a) and (b) of this section shall not include a recovery required to be made for any reason other than normal processing delays in putting the change into effect, even if the period of time for which the amounts must be retroactively withheld is less than four pay periods. Further, if normal processing delays exceed four pay periods, then the full procedures prescribed under §§ 361.4 and 361.5 of this part shall be extended to the employee.

§ 361.9 Exception to requirement that a hearing be offered.

When an employee is overpaid due to the hours worked reported on the payroll exceeding the actual hours worked, no pre-offset hearing must be granted since in such cases there is no question regarding credibility and veracity. In these cases the Board will make its determination under this part based upon review of the written record.

§ 361.10 Written agreement to repay debt as alternative to salary offset.

(a) *Notification by employee.* The employee may propose, in response to a Notice of Intent, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt which is received by the Board within thirty calendar days of the date of the Notice of Intent.

(b) *Board's response.* In response to timely notice by the debtor as described in paragraph (a) of this section, the Board will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the Board's discretion to accept a repayment agreement instead of proceeding by offset. In making this determination, the Board will balance the agency's interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, the Board will accept a repayment agreement instead of offset only if the employee is able to establish that offset would result in

§ 361.11

20 CFR Ch. II (4–1–08 Edition)

undue financial hardship or would be against equity and good conscience.

§ 361.11 Procedures for salary offset: When deductions may begin.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Notice of Intent to collect from the employee's current pay.

(b) If the employee filed a petition for hearing with the Board before the expiration of the period provided for in § 361.5, then deductions will begin after the hearing officer has provided the employee with a hearing and the hearing officer's final written decision is in favor of the Board.

(c) If an employee retires, resigns or his or her period of employment ends before collection of a debt is completed, offset shall be made from subsequent payments of any nature (*e.g.*, final salary payment, lump sum leave, etc.) due the employee from the Board to the extent necessary to liquidate the debt. If the debt cannot be liquidated by offset from any final payment due the employee from the Board, the Board shall liquidate the debt by administrative offset, pursuant to 31 U.S.C. 3716, from later payments of any kind which are due the employee from the United States.

§ 361.12 Procedures for salary offset: Types of collection.

A debt will be collected in a lump sum or in installments. Collection will be effected in one lump sum collection unless the employee is financially unable to pay in one lump sum, or if the amount of the debt exceeds 15 percent of disposable pay. In these cases, deduction will be by installments.

§ 361.13 Procedures for salary offset: Methods of collection.

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and the Board agree to alternative arrangements for repayment. The alternative arrangement must be in writing, signed by both the employee and the Board.

(b) *Installment deductions.* Installment deductions will be made over a period

not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in three years. Installment payments of less than \$25 per pay period or \$50 a month will be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* The Board will make deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

§ 361.14 Procedures for salary offset: Imposition of interest, penalties and administrative costs.

Interest will be charged in accordance with 4 CFR 102.13.

§ 361.15 Non-waiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee involuntary payment (of all or a portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

§ 361.16 Refunds.

The Board will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(b) The Board is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

§ 361.17 Coordination with other government agencies.

(a) *Board is paying agency.* (1) If the Board receives a claim which meets the requirements of 5 CFR 550.1108 from another agency, deductions shall begin